

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

IN RE:

Bky. No. 11-35671

Dale J. Kirchoff,

Chapter 7

Debtor.

TRUSTEE'S MOTION FOR AUTHORITY TO SELL ANNUITY

TO: The debtors and other entities specified in Local Rule 9013-3.

1. Terri A. Running, the Trustee of the bankruptcy estate of the above-named debtor, moves the court for the relief requested below and gives notice of hearing.
2. The court will hold a hearing on this motion at 11:00 a.m. on February 26, 2014 at the United States Courthouse, 316 North Robert Street, Courtroom 2A, St. Paul, Minnesota 55101.
3. Any response to this motion must be filed and served not later than February 19, 2014, which is seven days before the time set for the hearing (including Saturdays, Sundays, and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.
4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Fed. R. Bank. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this chapter 7 case was filed on September 7, 2011. The case is now pending in this court.
5. This motion arises under 11 U.S.C. § 363(b) and Fed. R. Bankr. P. 6004. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9013-1. Movant requests authority to sell a structured settlement annuity that is property of the estate.

6. At the time of the commencement of the case, the debtor owned an interest in a structured settlement annuity issued by American Family Insurance Group pursuant to claim number 411-065482-0200, as a result of an injury or loss sustained on September 2, 1992. As of the commencement of this case, the only payment remaining under said annuity was, and is, a single payment in the amount of \$19,172.93, payable February 14, 2015. The debtor's interest in said annuity and payment are herein referred to as the "Annuity."
7. The Annuity was properly scheduled as an asset of the debtor. It was not claimed as exempt, in whole or in part. The Annuity and the payment right thereunder are property of the bankruptcy estate, free and clear of any claim by the debtor or any other party.
8. The trustee has solicited an offer to purchase the Annuity from Stone Street Capital, in the amount of \$14,014.07. Trustee believes that sale of the annuity is in the best interest of the creditors and the estate, in that it will allow the case to be administered and closed approximately one year earlier than otherwise.
9. Sale of a structured settlement annuity is governed by Minnesota Statutes and by the Internal Revenue Code. The purpose of the Minnesota statutory scheme, Minn. Stat. sections 549.31 et seq., is to protect the holder of an annuity from predatory or other disadvantageous practices by annuity purchasers. Even though the bankruptcy estate is not within the class protected by these statutes, the annuity purchaser is requiring that the Trustee procure an order of this court finding that the proposed transaction complies with these statutes. Further, Internal Revenue Code section 5891 (26 USC 5891) which governs taxation of the purchase of annuities, refers specifically to an order of a "state" court approving the transfer. Therefore, the annuity purchaser is requiring that a corresponding order of the Minnesota State courts be obtained, at its own expense.

10. The remainder of this motion, and the provisions of the accompanying proposed “Order Approving Sale of Annuity,” recite the terms required by Minnesota Statutes and authorize the procurement of a state court order.

11. Trustee moves the court to enter its findings as follows:

“The proposed transaction falls with the provisions of Minnesota Statutes Section 549.31 et seq. In regard to the requirements of said statutes, the court finds:

(a) the transfer complies with the requirements of sections 549.31 to 549.34 and will not contravene other applicable law;

(b) not less than ten days before the date on which the payee first incurred an obligation with respect to the transfer, the transferee has provided to the payee a disclosure statement in bold type, no smaller than 14 points, specifying:

(1) the amounts and due dates of the structured settlement payments to be transferred;

(2) the aggregate amount of the payments;

(3) the discounted present value of the payments, together with the discount rate used in determining the discounted present value;

(4) the gross amount payable to the payee in exchange for the payments;

(5) an itemized listing of all brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, referral fees, administrative fees, legal fees, notary fees, and other commissions, fees, costs, expenses, and charges payable by the payee or deductible from the gross amount otherwise payable to the payee;

(6) the net amount payable to the payee after deduction of all commissions, fees, costs, expenses, and charges described in clause (5);

(7) the quotient, expressed as a percentage, obtained by dividing the net payment amount by the discounted present value of the payments; and

(8) the amount of any penalty and the aggregate amount of any liquidated damages, including penalties, payable by the payee in the event of a breach of the transfer agreement by the payee;

(c) the payee has established that the transfer is in the best interests of the payee and the payee's dependents;

(d) the payee has received independent professional advice regarding the legal, tax, and financial implications of the transfer;

(e) the transferee has given written notice of the transferee's name, address, and taxpayer identification number to the annuity issuer and the structured settlement obligor and has filed a copy of the notice with the court or responsible administrative authority; and

(f) that the transfer agreement provides that any disputes between the parties will be governed, interpreted, construed, and enforced in accordance with the laws of this state and that the domicile state of the payee is the proper place of venue to bring any cause of action arising out of a breach of the agreement. The transfer agreement must also provide that the parties agree to the jurisdiction of any court of competent jurisdiction located in this state.”

12. Trustee moves the court to enter its order as follows:

- “(i) That the Trustee’s proposed sale of the Annuity is approved.
- (ii) That the parties to the transaction are authorized to obtain a corresponding order from the Minnesota state courts, in order to comply with 26 U.S.C. 5891.
- (iii) That the stay provided by Bankruptcy Rule 6004(h) is hereby waived.”

WHEREFORE, the Trustee prays that the Court enter its findings and order accordingly.

Dated: January 16, 2014

Signed: /e/ Terri A. Running
Trustee in Bankruptcy
P.O. Box 583454
Minneapolis, MN 55458
(612) 279-2660
(612) 279-2666 *facsimile*

Verification. I, Terri A. Running, the moving party named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: January 16, 2014

Signed: /e/ Terri A. Running

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re: Dale Kirchoff,

Debtor.

Chapter 7

Bky Case No. 11-35671

UNSWORN DECLARATION FOR PROOF OF SERVICE

I, Jesse A. Horoshak, hereby certify that on January 16, 2014, I caused the following documents:

(1) Trustee's Motion for Authority to Sell Annuity; (2) Unsworn Declaration for Proof of Service;
and (3) Order Approving Sale of Annuity

to be filed electronically with the Clerk of Court through ECF, and that the above documents will be delivered by automatic e-mail notification pursuant to ECF and this constitutes service or notice pursuant to Local Rule 9006-1(a).

I further certify that I caused a copy of the same to be mailed to the following.

Dale Kirchoff
Po Box 254
Harris, MN 55032

SEE ATTACHED FOR FULL SERVICE LIST

and I declare under penalty of perjury that the foregoing is true and correct.

Date: January 16, 2014

/e/ Jesse A. Horoshak

Label Matrix for local noticing

0864-3

Case 11-35671

District of Minnesota

St Paul

Thu Jan 16 14:02:46 CST 2014

CAPITAL ONE BANK USA

PO BOX 60599

CITY OF INDUSTRY CA 91716-0599

U.S. Bank National Association

4500 Park Glen Road

Suite 300

St. Louis Park, MN 55416-4891

Capital One Bank (USA), N.A.

by American InfoSource LP as agent

PO Box 71083

Charlotte, NC 28272-1083

St Paul

200 Warren E Burger Federal Building and

US Courthouse

316 N Robert St

St Paul, MN 55101-1465

(p)DISCOVER FINANCIAL SERVICES LLC

PO BOX 3025

NEW ALBANY OH 43054-3025

Discover Bank

DB Servicing Corporation

PO Box 3025

New Albany, OH 43054-3025

FAIRVIEW CLINICS

PO BOX 9372

MINNEAPOLIS MN 55440-9372

FAIRVIEW HEALTH SERVICES

400 STINSON BLVD NE

MINNEAPOLIS MN 55413-2613

HSBC CARD SERVICES

PO BOX 9600

CAROL STREAM IL 60128-1960

JC CHRISTENSEN & ASSOC

PO BOX 519

SAUK RAPIDS MN 56379-0519

LAKE STATE FEDERAL CREDIT UNION

PO BOX 330

MOOSE LAKE MN 55767-0330

MESSERLI & KRAMER

3405 ANNAPOLIS LANE N

PLYMOUTH MN 55447-5342

(p)PORTFOLIO RECOVERY ASSOCIATES LLC

PO BOX 41067

NORFOLK VA 23541-1067

(p)US BANK

PO BOX 5229

CINCINNATI OH 45201-5229

US BANK HOME MORTGAGE

PO BOX 21948

EAGAN MN 55121-0948

US Trustee

1015 US Courthouse

300 S 4th St

Minneapolis, MN 55415-3070

DALE J KIRCHOFF

PO BOX 254

HARRIS, MN 55032-0254

Robert J. Hoglund

Hoglund, Chwialkowski & Mrozik, PLLC

1781 West County Road B

P.O. Box 130938

Roseville, MN 55113-0019

Terri A. Running

PO Box 583454

Minneapolis, MN 55458-3454

Thomas F Miller

Thomas F. Miller, P.A.

1000 Superior Blvd Ste 303

Wayzata, MN 55391-1873

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

DISCOVER

PO BOX 3007

NEW ALBANY OH 43054

PORTFOLIO RECOVERY ASSOC

PO BOX 12914

NORFOLK VA 23541

(d)Portfolio Recovery Associates, LLC

c/o Gm

POB 12914

Norfolk VA 23541

US BANK

PO BOX 790408

SAINT LOUIS MO 63179-0408

(d)US BANK N.A.

BANKRUPTCY DEPARTMENT

P.O. BOX 5229

CINCINNATI, OH 45201-5229

End of Label Matrix

Mailable recipients 20

Bypassed recipients 0

Total 20

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

IN RE:

Bky. No. 11-35671

Dale J. Kirchoff,

Chapter 7

Debtor.

ORDER APPROVING SALE OF ANNUITY

This matter came on for hearing pursuant to the Trustee's Motion for Approval of Sale of Annuity. Appearances, if any, were as noted in the record.

Upon the advice and arguments of counsel, and upon all of the files, records, and proceedings herein,

THE COURT FINDS:

1. This case was commenced on September 7, 2011, upon the filing of a voluntary petition by the debtor. The case remains pending under said chapter.
2. Terri A. Running, Esq. was appointed trustee, and continues to serve in such capacity.
3. At the time of the commencement of the case, the debtor owned an interest in a structured settlement annuity issued by American Family Insurance Group pursuant to claim number 411-065482-0200, as a result of an injury or loss sustained on September 2, 1992. As of the commencement of this case, the only payment remaining under said annuity was, and is, a single payment in the amount of \$19,172.93, payable February 14, 2015. The debtor's interest in said annuity and payment are herein referred to as the "Annuity."

4. The Annuity was properly scheduled as an asset of the debtor. It was not claimed as exempt, in whole or in part. The Annuity and the payment right there under are property of the bankruptcy estate, free and clear of any claim by the debtor or other any other party.
5. The trustee has solicited an offer to purchase the Annuity from Stone Street Capital, in the amount of \$14,014.07.
6. The trustee or the clerk has provided proper notice of this proposed transaction to all parties in interest, pursuant to applicable rules. No objection has been made within the time provided therefore.
7. The court finds the proposed transaction to be in the best interests of the estate.
8. The proposed transaction falls within the provisions of Minnesota Statutes Section 549.31 et seq. In regard to the requirements of said statutes, the court finds:

(a) the transfer complies with the requirements of sections 549.31 to 549.34 and will not contravene other applicable law;

(b) not less than ten days before the date on which the payee first incurred an obligation with respect to the transfer, the transferee has provided to the payee a disclosure statement in bold type, no smaller than 14 points, specifying:

- (1) the amounts and due dates of the structured settlement payments to be transferred;
- (2) the aggregate amount of the payments;
- (3) the discounted present value of the payments, together with the discount rate used in determining the discounted present value;
- (4) the gross amount payable to the payee in exchange for the payments;
- (5) an itemized listing of all brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, referral fees, administrative fees, legal fees, notary fees, and other commissions, fees, costs, expenses, and charges payable by the payee or deductible from the gross amount otherwise payable to the payee;
- (6) the net amount payable to the payee after deduction of all commissions, fees, costs, expenses, and charges described in clause (5);

- (7) the quotient, expressed as a percentage, obtained by dividing the net payment amount by the discounted present value of the payments; and
- (8) the amount of any penalty and the aggregate amount of any liquidated damages, including penalties, payable by the payee in the event of a breach of the transfer agreement by the payee;
- (c) the payee has established that the transfer is in the best interests of the payee and the payee's dependents;
- (d) the payee has received independent professional advice regarding the legal, tax, and financial implications of the transfer;
- (e) the transferee has given written notice of the transferee's name, address, and taxpayer identification number to the annuity issuer and the structured settlement obligor and has filed a copy of the notice with the court or responsible administrative authority; and
- (f) that the transfer agreement provides that any disputes between the parties will be governed, interpreted, construed, and enforced in accordance with the laws of this state and that the domicile state of the payee is the proper place of venue to bring any cause of action arising out of a breach of the agreement. The transfer agreement must also provide that the parties agree to the jurisdiction of any court of competent jurisdiction located in this state.

THE COURT THEREFORE ORDERS:

1. That the Trustee's proposed sale of the Annuity is approved.
2. That the parties to the transaction are authorized to obtain a corresponding order from the Minnesota state courts, in order to comply with 26 U.S.C. 5891.
3. That the stay provided by Bankruptcy Rule 6004(h) is hereby waived.

Dated:

Gregory F. Kishel
Chief United States Bankruptcy Judge